

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

KAYNE SUNSTATE INVESTORS, LLC  
A Delaware Limited Liability Company,

Plaintiff,

V.

C.A. No. 1:08-CV-00141 (SLR)

ROY ELIASSON, BRYON WOLF, and  
ALFRED WOLF,

Defendants.

**PLAINTIFF KAYNE SUNSTATE INVESTORS, LLC'S  
MOTION TO REMAND**

Plaintiff Kayne Sunstate Investors, LLC (“Kayne”), by and through its undersigned counsel, respectfully moves this Honorable Court pursuant to by 28 U.S.C. § 1447(c) for an Order remanding the above-captioned action in its entirety to the Superior Court of Delaware in and for New Castle County and, in support thereof, states as follows:

1. On February 8, 2008, Kayne commenced this action by filing a Complaint against defendants Roy Eliasson, Bryon Wolf, and Alfred Wolf (collectively, the “Defendants”) in the Superior Court of the State of Delaware in and for New Castle County.

2. Defendants were served with process on or about February 11, 2008.

Defendants have not contested service of process.

3. Kayne's Complaint contains counts for fraudulent misrepresentation, negligent misrepresentation, and breach of contract in connection with an Interest Contribution and Preferred Unit Purchase Agreement (the "Purchase Agreement") the Defendants induced Kayne

to enter with them and pursuant to which Kayne invested \$20 million in certain of the Defendants' telemarketing services companies.

4. The Purchase Agreement provides, among other things, that "[t]his Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware" and contains the following forum selection clause (the "Forum Selection Clause"):

Any suit, action or proceeding seeking to enforce any provision of, or based on any dispute or matter arising out of or in connection with, this Agreement, the Related Documents or the transactions contemplated hereby or thereby, must be brought in the courts of the State of Delaware, in New Castle County, or the federal courts in the District of Delaware. Each of the parties (a) consents to the exclusive jurisdiction of such courts... in any such suit, action or proceeding, (b) irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum....

5. On March 7, 2008, the Defendants filed a Notice of Removal pursuant to 28 U.S.C. § 1441 on the basis of diversity of citizenship as defined by 28 U.S.C. § 1332. (D.I. 1).

6. Under the circumstances of this case, the Forum Selection Clause operates as a waiver of the Defendants' right to remove this action to federal court.

7. Thus, Defendants' Notice of Removal clearly violates the Forum Selection Clause because it seeks to impermissibly divest the Superior Court of jurisdiction and deprive Kayne of its right as plaintiff to choose the Superior Court as a venue for disputes related to the Purchase Agreement.

WHEREFORE, Kayne respectfully requests that this Honorable Court enter an Order remanding the above-captioned action in its entirety to the Superior Court of Delaware in and for New Castle County.

Respectfully submitted,

/s/ John C. Phillips, Jr. (#110)  
John C. Phillips, Jr. (#110)  
Brian E. Farnan (#4089)  
David A. Bilson (#4986)  
PHILLIPS, GOLDMAN & SPENCE, P.A.  
1200 North Broom Street  
Wilmington, DE 19806  
(302) 655-4200  
Attorneys for Plaintiff

DATE: April 7, 2008